

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19765M
[REDACTED],)	
)	DECISION
Petitioners.)	
_____)	

On August 18, 2006, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioners) proposing income tax, penalty, and interest for the years 2003 and 2004 in the total amount of \$13,816. [Redacted]. [Redacted] will be used from this point forward in this decision when referring to the petitioners.

On October 19, 2006, a timely protest and petition for redetermination was filed by the petitioners. An informal hearing has not been requested by the petitioners. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

The petitioners failed to file their 2003 and 2004 individual income tax returns. [Redacted] (husband) was issued an Idaho driver's license on October 2, 1998, and August 5, 2002, that expired on August 3, 2002, and August 3, 2006, respectively. [Redacted] (wife) was issued an Idaho driver's license on July 1, 1997, and August 18, 2002, that expired on June 13, 2001, and June 13, 2005, respectively. The petitioners' received a homeowner's exemption on their [Redacted] residence [Redacted] for the years 2002 to present. On May 11, 2006, the TDB sent a letter with a questionnaire to the petitioners to help the Commission properly determine the petitioners' filing requirement.

In a letter from the petitioners dated June 18, 2006, they stated in part:

We are enclosing copies of IRS transcripts for years 2002, 2003, and 2004 that we have received. In 2002 we were in a single filing status;

2003 and 2004 we were married and filing jointly. There are also copies of [Redacted] tax return for 1999, and [Redacted] in 2000. In addition, you will find the [Redacted] returns filed [Redacted] in 1999 and 2000. Finally, there is the California return for [Redacted] for 2004.

On July 5, 2006, the Tax Enforcement Specialist (specialist) sent a letter to the petitioners in which he requested that the petitioners file their 2003 and 2004 Idaho state tax returns within 30 days from the date of his letter. Since the petitioners did not respond to the specialist's letter, the Commission issued a NOD to the petitioners on August 18, 2006, [Redacted].

In the petitioner's protest letter received by e-mail on October 20, 2006, they stated in part:

While we do not contest the determination of tax deficiency as a whole, we note the following factual errors and request a redetermination. We will make available any supporting documents reasonably requested by the Tax Commission, to the best of our ability.

On determination (a) above, we know that during 2004, we paid tax to the state of California which is not reflected. In addition, income reported for the months of November and December [Redacted] was earned in the state of California. . . .

In the petitioner's letter dated November 25, 2006, they stated that they were not able to obtain the relevant documents and requested additional time to complete the file necessary for the redetermination they requested.

The specialist sent the petitioners a letter dated January 3, 2007, which requested the petitioners provide by February 2, 2007, their additional documentation to support the changes they wanted the specialist to make to their NOD for the years 2003 and 2004. The petitioners did not respond to this letter.

On February 8, 2007, the specialist sent the petitioners a letter in which he stated in part:

If you will provide the California returns showing that you have paid taxes to California for 2004, I will also extend credit for taxes paid to California.

The wife sent an e-mail to the specialist dated March 7, 2007, in which she stated:

I was able to get my 2004 W2 as you requested (our payroll service provided this to me). Unfortunately, I have had no success attempting to get my California return. At least the attached indicates how much of payroll was taken for California state tax.

On April 20, 2007, the Tax Policy Specialist (policy specialist) sent the petitioners a letter to inform them of the alternatives for redetermining a protested NOD. A follow-up letter was sent to the petitioners on July 12, 2007. The petitioners did not respond to either letter.

To claim a credit for income taxes paid to another state, Idaho Code section 63-3029(4) requires the following:

To substantiate the credit allowed under this section, the state tax commission may require a copy of any receipt showing payment of income taxes to the other state or a copy of any return or returns filed with such other state, or both.

The wife has not established that she paid income taxes to the state of California. The W-2 she has provided merely shows that California income taxes were withheld.

Under Idaho's income tax laws, a resident of this state is required to report and pay income tax on all his or her taxable income regardless of source. A nonresident, on the other hand, is required to report and pay Idaho income tax on only his or her taxable income derived from Idaho sources. For taxable years beginning on or after January 1, 1996, the term "resident" is defined as "any individual who: (a) Is domiciled in the state of Idaho for the entire taxable year; [or] (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state." Idaho Code § 63-3013 (1996).

Domicile is defined in the Tax Commission's Income Tax Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and

to which place he has the intention of returning whenever he is absent.” Income Tax Administrative Rule 030.02, IDAPA 35.01.01.030.02 (1999). The term “domicile” denotes the place where an individual has the intention to remain permanently or for an indefinite time. While an individual can have several residences, he can legally only have one domicile at a time. Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 59, 524 P.2d 176, 187 (1973). A concurrence of three factors must occur to change an individual’s domicile. The factors are: (1) the intent to abandon the present domicile; (2) the intent to acquire a new domicile; and (3) physical presence in the new domicile. See Idaho Income Tax Administrative Rule 030.02.a, IDAPA 35.01.01.030.02.a (1999).

Since the wife was domiciled in Idaho for tax year 2004, she must include her California income in the petitioners’ Idaho taxable income.

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson’s Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioners to show that the tax deficiency is erroneous. Id. For the foregoing reasons, the Tax Commission finds that the petitioners failed to meet the burden in this case.

[Redacted] The petitioners have not provided the Commission with a contrary result to the determination of their income [Redacted] Therefore, the Commission must uphold the deficiency.

WHEREFORE, the Notice of Deficiency Determination dated August 18, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2003	\$5,070	\$1,268	\$1,191	\$ 7,529
2004	4,998	1,250	874	<u>7,122</u>
			TOTAL DUE	<u>\$14,651</u>

Interest is computed through January 11, 2008.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
